

No. 13,131

United States Court of Appeals
For the Ninth Circuit

WILLIAM R. DAVENA, JR.,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S PETITION FOR A REHEARING.
(Or, If Such Rehearing Be Denied, For a Stay of Mandate.)

EMMET J. SEAWELL,
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*Attorney for Appellant
and Petitioner.*

FILED

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*To the Honorable William Denman, Chief Judge, and
to the Honorable Associate Judges of the United
States Court of Appeals for the Ninth Circuit:*

William R. Davena, Jr., appellant above named, hereby petitions for a rehearing of the above cause decided on June 27, 1952, for the following reasons, to wit:

(1) There was no evidence presented by the appellee that substantially indicated or tended to prove that the appellant received any substantial income in the years in question, to wit, 1944, 1945 and 1946, which he did not include in his return.

(2) This Court has not taken into consideration the fact that the only income which was not reported

by the appellant was some \$50.00 given to him at Christmas time by a Mrs. Robinson, and as a matter of fact, Mrs. Robinson testified that she really did not know when or how much she ever gave to the appellant.

The only evidence in this case from which the Court may draw an inference of guilt was the appellant's own statement which was made after extended questioning by the agents of the United States Government and given in such circumstances that indicated to the appellant that if he made such statement the case could be civilly compromised.

CONCLUSION.

In conclusion it is submitted that the evidence was insufficient to support the conviction. It is based on mere assumptions drawn by the Government's witnesses from inadequate facts. The record is in such a condition that no witness could state with any degree of certainty when and from what source the appellant received any taxable income.

Dated, Sacramento, California,
July 25, 1952.

EMMET J. SEAWELL,
*Attorney for Appellant
and Petitioner.*

CERTIFICATE OF COUNSEL.

I hereby certify that I am counsel for appellant and petitioner in the above entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition is not interposed for delay.

Dated, Sacramento, California,
July 25, 1952.

EMMET J. SEAWELL,
*Attorney for Appellant
and Petitioner.*